

[Cite as *State v. Taylor*, 2016-Ohio-8311.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104284

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

RICHARD L. TAYLOR

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-15-597321-B

BEFORE: Stewart, J., McCormack, P.J., and Laster Mays, J.

RELEASED AND JOURNALIZED: December 22, 2016

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MELODY J. STEWART, J.:

{¶1} Bad blood existed between defendant-appellant Richard Taylor's codefendant, Shenae Cook, and another woman — so bad, in fact, that Cook and Taylor went to the woman's house so that Cook could fight her. As Taylor used his cell phone to record video of the fight, Cook kned the woman in the head, starting a brawl that spilled into the woman's house. Inside the house was a male friend of the woman, who tried to break up the fight. The male managed to force the two fighting women outside, but Taylor picked up a rock and struck the man in the head, causing serious injury. These acts caused the court to find Taylor guilty of two counts of aggravated burglary (one for each victim) and two counts of attempted felonious assault (both counts relating to the male). The assignments of error on appeal question the sufficiency of the evidence with respect to aggravated burglary and accomplice liability, the weight of the evidence to support the burglary count, and whether the attempted felonious assault and aggravated burglary counts should have merged for sentencing. We find no error and affirm.

{¶2} Count 2 of the indictment charged Taylor with committing aggravated burglary in violation of R.C. 2911.11(A)(1) — that he knowingly trespassed into an occupied structure with the purpose to commit in that structure the offense of felonious assault against the female victim. Taylor argues in his first assignment of error that his liability for this count could only be based on his being an aider and abettor to Cook (there was no evidence that Taylor struck the female victim), but that the state failed to present evidence that he committed an overt act necessary to be held liable as an accomplice for those acts committed against the female victim. He contends that his actions with respect to the female victim were limited to recording the fight on the camera of his cell phone.

{¶3} The Due Process Clause of the United States Constitution requires criminal convictions to be based on legally sufficient evidence. *Jackson v. Virginia*, 443 U.S. 307, 316, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). The evidence is considered “legally sufficient” if, after viewing the evidence most favorably to the state, “any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.” *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus. This is a quantitative standard of evidence that looks only at whether any rational trier of fact could find that the evidence existed; in other words, did the state offer any evidence going to each essential element of the offense. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997). If so, the evidence is legally sufficient for purposes of the Due Process Clause. The sufficiency of the evidence standard requires great deference to the trier of fact. A reviewing court faced with a record of historical facts that supports conflicting inferences must presume — even if it does not affirmatively appear in the record — that the trier of fact resolved any such conflicts in favor of the prosecution, and must defer to that resolution. *Cavazos v. Smith*, 565 U.S. 1, 132 S.Ct. 2, 181 L.Ed.2d 311 (2011), citing *Jackson* at 326.

{¶4} The state's evidence showed that Cook had a long-standing feud with the female victim. At about 4 a.m. on the morning the offenses occurred, Cook told Taylor to drive over to the victims' house. The female victim was sitting on the steps to the porch, so Cook exited the car and told Taylor to use his cell phone to record what would follow. Cook approached the woman, said that they were "about to fight now," and kned her in the head. The woman fought back. Inside the house at the time of the fight, the male victim was caring for his newborn daughter (the female victim was the child's mother). He heard a commotion outside and went to the door to see what was happening. As he approached the door, the fight spilled inside the house. The man saw Cook with a handful of the female victim's hair, so he tried to separate the two. The man testified that he pushed the two women out of the house and saw Taylor standing off to the side of the porch, holding a rock. Taylor struck the man on the head with the rock. The two men began to wrestle. The fight ended suddenly when Taylor and Cook left. The following day, the male victim received medical treatment for a bite on his back (caused by Cook) and stroke symptoms resulting from being struck with the rock.

{¶5} The state offered no evidence to show that Taylor assaulted the female victim, so his culpability for committing felonious assault could only be established as an aider and abettor. A person is complicit in the conduct of another when, acting with the kind of culpability required for the offense, the person aids or abets another in committing the offense. *See* R.C. 2923.02(A)(2). The phrase “aid and abet” has been construed to mean “to assist or facilitate the commission of a crime, or to promote its accomplishment.” *State v. Johnson*, 93 Ohio St.3d 240, 243, 754 N.E.2d 796 (2001), quoting *Black’s Law Dictionary* 69 (7th Ed.1999).

{¶6} A rational trier of fact could conclude that Taylor assisted or facilitated Cook in committing an assault against the female victim. Viewed in a light most favorable to the state, the evidence showed that the male victim was trying to break up the fight between the two women and eject Cook from the house. Taylor struck the man in the head with a rock as he pushed Cook out the door, an act that a rational trier of fact could view as intended to prolong the fight and/or aid Cook. This was sufficient evidence that Taylor assisted Cook’s ongoing assault of the female victim.

{¶7} Taylor’s argument with respect to the remaining counts consists of nothing more than his assertion that “[a]ll other offenses alleged action by Cook for which Appellant could not have been found guilty under an accomplice liability theory.” Appellant’s brief at 14. This is not a proper argument under App.R. 16(A)(7) because it fails to separately address each of the remaining counts. We reject it on that basis.

{¶8} What is more, the “other offenses” for which Taylor believes his guilt on accomplice liability was premised were merged into Count 2 for purposes of sentencing (only Count 6, relating to the attempted felonious assault against the male victim did not merge for sentencing). Any finding of error on counts that were merged into Count 2 for sentencing would be harmless because they could not affect the sentence. *See State v. Powell*, 49 Ohio St.3d 255, 263, 552 N.E.2d 191 (1990); *State v. Worley*, 8th Dist. Cuyahoga No. 103105, 2016-Ohio-2722, ¶ 23; *State v. Croom*, 7th Dist. Mahoning No. 12 MA 54, 2013-Ohio-5682, ¶ 60 (“The Supreme Court has concluded that, even if there is insufficient evidence to support one count, where that count has been merged with another count, the error in rendering a verdict on that count is harmless beyond a reasonable doubt.”).

{¶9} Taylor next argues in his second assignment of error that the state failed to offer legally sufficient evidence to prove that he acted knowingly by entering the female victim’s house sufficient to commit a burglary. Without conceding that he actually entered the house, Taylor submits that if he did, he acted recklessly as part of the fight that was already occurring outside the house on the porch.

{¶10} The “knowingly” element of aggravated burglary as defined by R.C. 2911.11(A) is satisfied with evidence that, “regardless of purpose, when the person is aware that the person’s conduct will probably cause a certain result or will probably be of a certain nature.” R.C. 2901.22(B).

{¶11} The trier of fact could rationally have found that Taylor acted purposely by entering the female victim's house. The evidence, viewed in a light most favorable to the state, shows that the male victim testified that after he had been struck by the rock, both Taylor and Cook were in the house and that he and Taylor were "locked up tussling." *See* tr. 50. This was sufficient evidence to show that Taylor purposely entered the house.

{¶12} Even if there had been no evidence that Taylor entered the house, as an aider and abettor, his right to enter the house was no greater than Cook's right to enter the house. *State v. Mitchell*, 8th Dist. Cuyahoga No. 94287, 2010-Ohio-5775, ¶ 15 ("a violent crime committed in the residence of one other than the defendant always constitutes aggravated burglary i.e., the commission of the crime terminates the privilege to remain in the home."). Cook's unprovoked assault on the female victim denied her any claim that she could rightfully enter the house, so the trier of fact could reject Taylor's assertion that he acted recklessly when entering the house.

{¶13} The third assignment of error complains that the court's verdict is against the manifest weight of the evidence, primarily on the basis that the male victim gave conflicting testimony about where Taylor's attack on him occurred and the instrument used to perpetrate the attack.

{¶14} We previously noted that the court merged all counts relating to the aggravated burglary into Count 2. That count charged Taylor with aggravated burglary with the intent to commit a felonious assault against the female victim. It was undisputed that Taylor did not assault or attempt to assault the female victim, so the state tried him on the theory that he aided and abetted Cook's commission of aggravated burglary. Having found that the state offered sufficient evidence from which a rational trier of fact could conclude that all the essential elements of aggravated burglary had been established for Count 2, Taylor's arguments about whether he entered the house are immaterial because his guilt as an aider and abettor is based on Cook's conduct. The complicity statute treats the accomplice as though "he was the one who committed every act of the underlying principal offense." *State v. Jackson*, 90 Ohio App.3d 702, 705, 630 N.E.2d 414 (6th Dist.1993); R.C. 2923.03(F). Cook entered the house during the course of a continuing assault on the female victim, so Taylor has the same culpability as Cook.

{¶15} The fourth assignment of error complains that the court erred by failing to merge Count 6 into Count 2 for sentencing. He argues that the attempted felonious assault that he committed under Count 6 was incidental to the aggravated burglary under Count 2.

{¶16} The court found Taylor guilty of Count 2, aggravated burglary; Count 3, aggravated burglary; Count 4, attempted felonious assault; and Count 6, attempted felonious assault. The court merged Counts 2, 3, and 4 for sentencing, but separately sentenced Taylor on Count 6.

{¶17} The court did not err by refusing to merge Counts 2 and 6. “Two or more offenses of dissimilar import exist within the meaning of R.C. 2941.25(B) when the defendant’s conduct constitutes offenses involving separate victims or if the harm that results from each offense is separate and identifiable.” *State v. Ruff*, 143 Ohio St.3d 114, 2015-Ohio-995, 34 N.E.3d 892, paragraph two of the syllabus. There were separate victims in this case: Count 2 was an aggravated burglary committed against the female victim; Count 6 was an attempted felonious assault against the male victim. Having been committed against different victims, they were offenses of dissimilar import that were not subject to merger. *State v. Hall*, 8th Dist. Cuyahoga No. 102717, 2015-Ohio-5148, ¶ 10; *State v. Adams*, 8th Dist. Cuyahoga No. 102387, 2015-Ohio-3883, ¶ 10.

{¶18} Judgment affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MELODY J. STEWART, JUDGE

TIM McCORMACK, P.J., and
ANITA LASTER MAYS, J., CONCUR